

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

WA.No. 34 of 2007()

AGAINST THE JUDGEMENT IN WPC.17647/2006 Dated 04/10/2006
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APPELLANT: PETITIONER IN W.P.

P.O.SAMSON, S/O. MATHAI OOMMEN,
HOUSE NO. 32/2110 A, DHANYA,
PALARIVATTOM, KOCHI.25.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: RESPONDENTS

1. STATE OF KERAL, REP. BY THE
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.
2. DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE ND ANTI CORRUPTION BUREAU,
SPECIAL CELL, ERNAKULAM.

BY G.P. SRI T.B. HOOD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 03/04/2007, THE COURT ON 12/04/2007 DELIVERED THE
FOLLOWING:

K.S.RADHAKRISHNAN, Ag. C.J. &

M.N. KRISHNAN, J.

W.A.No. 34 of 2007

DT. APRIL 12, 2007

JUDGMENT

M.N.Krishnan, J.

This writ appeal is preferred against the judgment in W.P.(C) No.17647/2006. The prayer in the writ petition is to issue a writ of certiorari to quash the proceedings in C.C.No.9/2006 on the file of the Enquiry Commissioner and Special Judge, Thrissur. The learned Single Judge held that there are no grounds to quash the proceedings and dismissed the writ petition.

2. The brief facts necessary for the disposal of the appeal are stated as follows:-

The petitioner was appointed as a Junior Engineer in the Public Works Department in 1971. He was promoted as Assistant Engineer in 1981, Executive Engineer in 1998 and a Superintending Engineer later and he retired from service on 31.12.2004. On the basis of an anonymous petition an investigation was ordered for the period from 1.6.1972 to 31.12.1992 and First Information Report was registered on 4.5.1994 under sec.5(2) read with sec.5(2)(e) of the Prevention of Corruption Act, 1988. It is the contention of the writ petitioner that he had not amassed wealth in disproportion to the income and he had married

from a very rich family and therefore the prosecution case against him is totally unwarranted. On the other hand, the prosecution would allege that he had amassed properties disproportionate to his income and therefore he is liable to be proceeded with. The main challenge by the writ petitioner is to the effect that there had been inordinate delay in completing the investigation and that a second First Information Report has been registered which is unknown to law and therefore the whole proceedings are vitiated which requires interference at the hands of this court. The learned Single Judge found that there is no fresh First Information Report and further the delay is reasonably explained and therefore the writ petition lacks merits and therefore it is only to be dismissed.

3. So far as the complaint of a second First Information Report is concerned, it can be seen from the counter statement and the records available that a special unit was formed for dealing with vigilance cases and in the year 1997 the original First Information Report was transferred to the said wing for completion of investigation and so it is not the lodging of a new First Information Report at all. As observed by the learned Single Judge, the First Information Report contained all the particulars and only on transfer it has been re-numbered. So the mere transfer of a First Information Report to the specially constituted cell does not amount to creation of a new First Information Report as contended by the learned counsel for the appellant. The learned counsel had drawn the attention of this court to the decision reported in 2001 (6) SCC 181 - T.T. Antony v. State of Kerala and Others. It was a case where there was a

second First Information Report registered in the matter. Here, the First Information Report is Ext.P7 and Ext.P8 is only a re-registration of the First Information Report on account of the transfer to the newly constituted vigilance cell or, in other words, Ext.P8 is only a re-registration of the crime already registered due to certain administrative reasons. Therefore, the dictum and principles laid down in Antony's case (supra) does not apply to the facts of the present case and therefore it has only to be repelled.

4. The next question which has been sought to be considered by us is regarding the inordinate delay in completion of the investigation. It is true that a complaint was received in the year 1986 which was forwarded for investigation and the First Information Report was registered on 4.5.1994 and the charge sheet had been laid only in late 2006. It has to be stated that the alleged involvement of the writ petitioner in this case is regarding the accumulation of wealth which is not in commensuration with the income possibility of the said person. It has been brought before us that innumerable number of documents had to be scrutinised, bank accounts had to be examined and persons to be questioned to complete the investigation. There was also a defence raised by the accused to the effect that he had married the daughter of a senior engineer in the Public Works Department and that she had been given good amount of dowry and large sovereigns of gold at the time of the marriage and therefore it is not correct on the part of the investigating agency to hold that there is disproportionate wealth in the hands of the writ petitioner. So, evidently, the

investigating agency had to dwell deep into various factual, documentary as well as evidence collected from the bank for the purpose of proceeding with the matter. There is no slackness or negligence which can be attributed to the investigating agency in completing the investigation.

5. The learned counsel had cited before us few decisions of the Apex Court in support of his contention. He has referred to the decision reported in AIR 1998 SC 3281 - Raj Deo Sharma's case. There the Apex Court was considering the delay in trial of more than 13 years since the institution of the First Information Report and held that in such cases there has to be interference by quashing the First Information Report. In the decision reported in AIR 2002 SC 1856 a larger Bench of the Apex Court held that one cannot fix a time schedule for finishing the trial and each case has to be viewed with respect to the relevant facts and circumstances of the case. The Apex Court also referred to the decision in Antulay's case. So these two decisions relied upon by the learned counsel for the appellant would show that the courts had always attempted to look into the matter depending upon the facts and circumstances of the case and if the delay is not properly explained, then the court has the liberty to quash the proceedings

6. The learned counsel for the appellant had then referred to a recent decision of the Apex Court reported in JT 2006 (12) SC 533 - Moti Lal Saraf v. State of Jammu & Kashmir and Another. There the Apex Court considered a delay of more than two and a half decades in a case registered under the

Prevention of Corruption Act. In paragraph 9 the Apex Court held:-

“In a number of cases, this court on consideration of peculiar facts and circumstance of individual cases had quashed the proceedings.”

The court also considered various decisions of the Apex Court including the Seven Judge Bench case (P.Ramachandra Rao v. State of Karnataka - JT 2002 (4) SC 92). The court observed:-

“It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Art.21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted.”

As discussed by us earlier, here acceptable reasons are placed by the investigating agency for the delay in completing the case. A perusal of the case records would also reveal that, whatever possible, had been done by the investigating agency and it was not on account of their laches and negligence and therefore we find that the delay is properly explained in this case.

7. It is also profitable to refer to the previous proceedings in this case. This is not for the first time that the writ petitioner is approaching this court for the same relief. Earlier he had filed a writ petition (W.P.(C) No.29971/2005) and a learned Single Judge of this Court, after considering elaborately the materials,

held that the proceedings cannot be quashed. The learned Judge also found that:-

“It is well settled position of law that the powers conferred on this court under Art.226 of the Constitution of India cannot be exercised to quash criminal proceedings pending before a criminal court and the powers under Art.227 can be exercised only to correct a Tribunal or Court when it act without any jurisdiction.”

The learned Judge also pointed out the various remedies available to the party including the one under sec.227 of the Criminal Procedure Code. Against that decision a writ appeal was filed as W.A.No.489/2006 and it was also dismissed with certain observations. The charge sheet was laid on 18.5.2006 and the writ appeal was disposed of on 13.6.2006 with the observation that the observations made by the learned Single Judge in the judgment dt. 28.2.2006 would not be construed as an expression of opinion on the merits of the controversy. The learned Government Pleader had brought to our notice that for the purpose of investigation 240 documents had to be seized and 90 witnesses were to be questioned. Details were to be collected from innumerable number of officers and there was further complication created by the writ petitioner in putting forth the plea of financial stability of his wife as a source of income. So we feel this is a fit case where the delay is properly explained. It is true that there has been some delay, but the delay is well explained.

Therefore, the writ appeal lacks merits and the same is dismissed.

Taking into consideration the length of time involved for the investigation, we hope that the Sessions Court where the matter is pending will certainly advert its mind to the said facts and try for a speedy disposal of the case and also give all the opportunity to the writ petitioner to raise the plea of discharge under sec.227 of the Criminal Procedure Code.

The Writ Appeal is disposed of as above.

K.S.RADHAKRISHNAN
(Ag. CHIEF JUSTICE)

M.N. KRISHNAN,
(JUDGE)

mt/-